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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JESSICA WILLIAMS on behalf of herself and all others similarly situated, Plaintiff, vs. TWOMAGNETS INC. d/b/a CLIPBOARD HEALTH, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 22STCV10645 ASSIGNED FOR ALL PURPOSES TO: Judge: Kenneth R. Freeman Dept.: 14 Class Action **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** [Declarations of Lance Dacre, Hali M. Anderson, Jessica Williams , Rochell Minor and [Proposed] Order, concurrently filed herewith] Date: March 20, 2025 Time: 10:00 a.m. Dept.: 14

PLEASE TAKE NOTICE THAT on March 20, 2025 at 10:00 a.m. in Department 14 of the above entitled Court located at 312 N. Spring Street, Los Angeles, CA 90012, Plaintiffs Jessica Williams and Rochell Minor ("Plaintiffs") will and hereby do move the Court for an Order: (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James Hawkins, Lance Dacre and Isandra Fernandez of James Hawkins APLC and Hali M. Anderson and Samara A. Bahu of GrahamHollis APC as Class Counsel for Plaintiffs and the Class Members in this matter; (3) provisionally approving Plaintiffs as Class Representatives; (4) provisionally approving CPT Group, Inc., as the Administrator in this matter; (5) provisionally approving and directing distribution of the Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval and; (6) scheduling a hearing date for Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement.

This Motion is made pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement of a purported class action and allows the court to preliminarily certify a class for settlement purposes. This motion is based on the proposition that this Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the Settlement.

This unopposed motion is based on: (i) the following Memorandum of Points and Authorities; (ii) the concurrently filed Declarations of attorneys Lance Dacre and Hali M. Anderson; (iii) the concurrently filed Declarations of Plaintiffs Jessica Williams and Rochell Minor; (iv) the Class Action and PAGA Settlement Agreement ("Settlement Agreement") attached as **Exhibit 1** to the Declaration of Lance Dacre; (v) upon the oral arguments of counsel (should there be any) and; (vi) upon the complete records and file herein.

Dated: February 18, 2025

JAMES HAWKINS, APLC

Isandra Y. Fernandez, Esq.
Lance Dacre, Esq.
Attorneys for Plaintiff
Jessica Williams

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jessica Williams and Rochell Minor ("Plaintiffs") on behalf of themselves and all Class Members, filed class and representative actions pursuant to Labor Code §§ 201-203, 204, 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558,558.1,1174, 1174.5, 1175, 1194, 1194.5, 1197, 1197.5, 1198, 2800, 2802, and applicable Industrial Welfare Commission ("IWC") Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, expense reimbursement, penalties, other equitable relief, and reasonable attorneys' fees and costs. Plaintiffs now bring this Motion for Preliminary Approval pursuant to California Rules of Court Rule 3.769 seeking approval of the settlement of the two actions.

This is a global settlement encompassing two matters: *Jessica Williams v. Twomagnets, Inc. dba Clipboard Health* ("*Williams*") (Los Angeles Superior Court, Case No. 22STCV10645) and *Rochell Minor v Twomagnets, Inc. dba* Clipboard Health, ("*Minor*") (Alameda County Superior Court, Case No. 23CV034399).

Subject to court approval, Plaintiffs and Defendant Twomagnets, Inc.[1] d/b/a Clipboard Health ("Clipboard" or "Defendant," collectively with Plaintiffs the "Parties") have reached a settlement of the claims asserted on behalf of the putative class and aggrieved employees for a total of Six Million Dollars ($6,000,000) ("Gross Settlement Amount" or "GSA"). The GSA will be used to pay individual payments to class members (as explained herein, comprising Individual Main Class Payments and Individual 2802 Class Payments), payment to the LWDA and alleged aggrieved employees (as explained herein, comprising of Individual Main PAGA Payments and Individual 2802 PAGA Payments), Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator's Expenses (the "Settlement"). **This is a non-reversionary cash settlement**. All Class Members who do not opt out of the Settlement will automatically be mailed Individual Class Payments. Additionally, Class Members who are within the PAGA group will be mailed their respective Individual PAGA Payments associated with the PAGA penalty portion of the settlement amount regardless of opt-out status. There is no claim

[1] Twomagnets Inc. has been converted to Twomagnets LLC. Twomagnets Inc. no longer exists.

filing process, and Class Members do not have to file a claim to be mailed a payment.

As discussed more thoroughly below, the proposed Settlement satisfies all necessary criteria for preliminary approval under California law and falls well within the range of reasonableness, making approval both proper and appropriate. As such, Plaintiffs move this Court for an Order: (i) provisionally certifying the proposed Class; (ii) provisionally approving James Hawkins, Lance Dacre and Isandra Fernandez of James Hawkins APLC and Hali M. Anderson and Samara A. Bahu of GrahamHollis APC as Class Counsel for the named Plaintiffs and putative Class Members; (iii) provisionally approving Jessica Williams and Rochell Minor as the Class Representatives ("Plaintiffs" or "Class Representatives"); (iv) provisionally appointing CPT Group, Inc. ("CPT") as the Administrator; (v) provisionally granting preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"); (vi) provisionally directing distribution of the Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval ("Class Notice") pursuant to the terms and conditions set forth in the Settlement Agreement; and (vii) scheduling a final approval hearing.

II. FACTUAL BACKGROUND

Plaintiffs Williams and Minor worked shifts booked using Clipboard's online marketplace as Certified Nursing Assistants ("CNA"). Clipboard operates an online marketplace that allows healthcare professionals throughout California to connect with healthcare facilities and book shifts at those facilities. These Class and Private Attorney General Act of 2004 ("PAGA"), Labor Code Section 2699 *et seq.*, Representative actions are related and brought on behalf of healthcare professionals based on Plaintiffs' contentions that Defendant knowingly and intentionally misclassified Plaintiffs and Class Members as independent contractors thus failing to pay all wages owed and to provide compliant rest and meal breaks**.** Defendant denies the claims alleged and disputes any liability for the damages sought.

A. <u>Plaintiff Williams's Pleadings</u>

On March 28, 2022, Plaintiff Williams filed a wage and hour class action in the Superior Court of the State of California, County of Los Angeles based on allegations that Defendant: (1) failed to pay all lawful wages; (2) failed to provide statutorily compliant rest and meal periods and/or to pay one (1) hour of pay at the employees' regular rate of compensation for each workday that the meal period and/or rest period was not properly provided; (3) failed to reimburse employee expenses; (4) failed to timely pay all wages owed at the termination of the class members' employment; (5) failed to timely pay all wages owed during the class members' employment; (6) failed to provide compliant, accurate, itemized wage statements; and (7) UCL violations. (See Declaration of Lance Dacre ("Dacre Decl." ¶ 2.) On that same day, Plaintiff provided written notice to Defendant and the Labor Workforce Development Agency ("LWDA") of her intention to either file a PAGA complaint or amend her existing complaint to include a PAGA claim. (Dacre Decl., ¶ 3.) On June 2, 2022, Plaintiff Williams filed a First Amended Complaint adding claims under the PAGA. (Dacre Decl., ¶ 4.)

B. <u>Plaintiff Minor's Pleadings</u>

On March 16, 2023, Plaintiff Minor provided written notice to the LWDA and Defendant of his intention to bring claims under PAGA. (Declaration of Hali M. Anderson ("Anderson Decl."), ¶ 22.) On May 25, 2023, Plaintiff Minor filed a Class and PAGA action Complaint against Defendant in the Superior Court of the State of California, County of Alameda based on allegations that Defendant: (1) failed to provide meal periods; (2) failed to provide rest periods; (3) failed to pay all minimum and regular; (4) failed to pay overtime and double time wages; (5) converted wages; (6) failed to reimburse for all necessary business expenses; (7) failed to timely pay all wages due during and upon separation of employment; (8) failed to furnish accurate itemized wage statements; (9) failed to maintain accurate records; (10) violated California Business & Professions Code §§ 17200, *et seq.*; and (11) violated the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). (Anderson Decl., ¶ 23.)

Throughout this litigation, Clipboard has denied Plaintiffs' allegations in all of the complaints against it and raised defenses to their claims, individually and on a class wide and representative basis. Defendant maintains that its policies and/or practices meet the requirements of the Labor Code and applicable Wage Orders with regard to the provision of meal and rest breaks, expense reimbursements and the payment of all compensation owed by law to workers who booked shifts on Defendant's marketplace. (Dacre Decl., ¶ 5.) To date, no motion for class certification has been filed, no class has been certified, and the court has not made any findings that Clipboard engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation. (Dacre Decl., ¶ 6.)

C. <u>Discovery and Mediation</u>

Through informal discovery, Plaintiffs and Defendant have exchanged extensive documents and information. Clipboard has produced hundreds of pages of information, including time and pay records of Plaintiffs and Class Members as well as the applicable pay rates. (Dacre Decl., ¶ 7; Anderson Decl., 34, 37.) Clipboard also provided information regarding the number of Class Members during the relevant time period and various corporate documents reflecting Defendant's wage and hour policies and practices. (*Id*.). Plaintiffs' counsel also engaged in discussions with Class Members who provided support to Plaintiff's claims. (Anderson Decl., ¶ 30.)

After conducting extensive informal discovery, exchanging relevant information and engaging in numerous discussions regarding the claims alleged, on March 1, 2024, the Parties participated in an all-day mediation with David A. Rotman, Esq., an experienced wage and hour class action mediator. (Dacre Decl., ¶ 8; Anderson Decl., ¶ 27.) At the mediation, the parties exchanged further information and documentation concerning Plaintiffs' claims and Clipboard's defenses. However, the Parties were unable to reach a settlement. (Dacre Decl., ¶ 8; Anderson Decl., ¶ 32.)

Thereafter, on April 24, 2024, the Parties participated in a second full-day mediation with Mr. Rotman. (Dacre Decl., ¶ 9, Anderson Decl., ¶ 33.) Although yet again the Parties were unable to reach a settlement at the conclusion of the mediation, they continued in settlement discussions with the assistance of mediator Rotman. (*Id.*) Eventually, Mr. Rotman issued a mediator's proposal, which the Parties accepted on or about May 1, 2024, resulting in the settlement of this Action. (*Id.*) Thereafter, the principle terms of the settlement agreement were memorialized in a Memorandum of Understanding executed by the Parties on or about May 21, 2024. (Dacre Decl., ¶ 10, Anderson Decl., ¶ 33.)

Subsequently, the Parties exchanged numerous drafts of the Class Action and PAGA Settlement Agreement ("Settlement Agreement") and engaged in numerous discussions regarding proposed revisions thereto. (Dacre Decl. ¶ 11.) The final terms and provisions of the Settlement Agreement were approved and executed by all the parties on or about February 17, 2025. (*Id.*, Exh. 1- Settlement Agreement.)

Based on their own respective independent investigations and evaluations and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution, the discovery and investigation conducted to date and the benefits received under the settlement, Plaintiffs and their counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the named Plaintiffs and the Class Members. (Dacre Decl., ¶ 12.; Anderson Decl., ¶ 39.)

III. SUMMARY OF SETTLEMENT TERMS

A. Class Members

The "Class" is comprised of two subclasses: "Main Class" and "2802 Class." Class Members may be a member of one or both subclasses. (Settlement Agreement, ¶ 1.5.)

"Main Class" means all individuals who were classified as independent contractors and worked a shift in California booked through Defendant's marketplace at any time from May 17, 2022, through May 31, 2024, or through the date on which the Main Class Shifts equal 703,499, whichever is earlier ("Main Class Period"). (Settlement Agreement, ¶¶ 1.5.(a); 1.13.(a).)

"2802 Class" means all individuals who were classified as independent contractors and worked a shift in California booked through Defendant's marketplace at any time from March 28, 2018, through May 16, 2022 ("2802 Class Period"). (Settlement Agreement, ¶¶ 1.5.(b); 1.13.(b).)

B. Alleged Aggrieved Employees

"Alleged Aggrieved Employees" is comprised of the "Main PAGA Group" and the "2802 PAGA Group." (Settlement Agreement, ¶ 1.4.)

"Main PAGA Group" means all individuals who were classified as independent contractors and worked a shift in California booked through Defendant's marketplace at any time from May 17, 2022, through the end of the Main Class Period ("Main PAGA Period"). (Settlement Agreement, ¶¶ 1.4.(a); 1.34.(a).)

"2802 PAGA Group" means all individuals who were classified as independent contractors and worked a shift in California booked through Defendant's marketplace at any time from March 28, 2021, through May 16, 2022 ("2802 PAGA Period"). (Settlement Agreement, ¶¶ 1.4.(b); 1.34.(b).)

C. <u>Allocation of Settlement Amount</u>

1. The Gross Settlement Amount ("GSA") is Six Million Dollars ($6,000,000) which is the total amount Defendant agrees to pay under the Settlement, excluding employer sided payroll taxes. The GSA will be used to pay Individual Main Class Payments, Individual 2802 Class Payments, Individual Main PAGA Payments, Individual 2802 PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administration Expenses Payment. (Settlement Agreement, ¶¶ 1.23.; 3.1.)

2. Subject to Court approval, Class Counsel shall be paid a Class Counsel Fees Payment of not more than one-third (1/3), which is estimated to be Two Million Dollars ($2,000,000) and a Class Counsel Litigation Expenses Payment not to exceed Forty Thousand Dollars ($40,000). (Settlement Agreement, ¶ 3.2.(b).)

3. Subject to Court approval, Class Representative Service Payments to the Class Representatives of not more than Ten Thousand Dollars ($10,000) each to Plaintiffs Jessica Williams and Rochell Minor, (in addition to any Individual Class Payments Plaintiffs are entitled to receive as Participating Class Members and any Individual PAGA Payments due to Plaintiffs) (Settlement Agreement, ¶ 3.2.(a).)

4. Subject to Court approval, the Settlement Administrator will receive an Administration Expenses Payment not to exceed Sixty-One Thousand Dollars ($61,000) except for a showing of good cause and as approved by the Court. (Settlement Agreement, ¶ 3.2.(c).)

5. Subject to Court approval, Defendant shall pay PAGA Penalties in the amount of (i) Two Hundred Thousand Dollars ($200,000) allocated from the GSA, with 75% ($150,000)

allocated to the LWDA PAGA Payment and 25% ($50,000) allocated to the Individual Main PAGA Payments and (ii) Five Hundred Dollars ($500) to be paid from the GSA, with 75% ($375) allocated to the LWDA PAGA Payment and 25% ($125) allocated to the Individual 2802 PAGA Payments. (Settlement Agreement, ¶ 3.2.(d).)

6. Subject to Court Approval, each Class Member, who does not submit a valid request for exclusion ("Participating Main Class Member"), shall receive an Individual Main Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Shifts worked by all Participating Main Class Members during the Main Class Period and (b) multiplying the result by each Participating Main Class Member's Shifts worked during the Main Class Period. The Net Settlement Amount is the amount remaining after deducting amounts set forth in paragraphs 2-5 above, from the total GSA. (Settlement Agreement, ¶¶ 1.31., 3.2.(e).)

7. Subject to Court Approval, the Individual 2802 Class Payment will be calculated by: (a) dividing $10,000 by the total number of Shifts worked by all Participating 2802 Class Members during the 2802 Class Period and (b) multiplying the result by each Participating 2802 Class Member's Shifts worked during the 2802 Class Period. (Settlement Agreement, ¶ 3.2.(f).)

8. Subject to Court Approval, Individual Main PAGA Payments will be calculated by: (a) dividing the amount of the Main PAGA Group's 25% share of PAGA Penalties by the total number of Main PAGA Period Shifts worked by the Main PAGA Group during the Main PAGA Period and (b) multiplying the result by each Main PAGA Group member's Main PAGA Period Shifts. (Settlement Agreement, ¶ 3.2.(d)(i).)

9. Subject to Court Approval, the Individual 2802 PAGA Payment will be calculated by (a) dividing the amount of the 2802 PAGA Group's 25% share of the PAGA Penalties by the total number of 2802 PAGA Shifts worked by the 2802 PAGA Group during the 2802 PAGA Period and (b) multiplying the result by each 2802 PAGA Group member's 2802 PAGA Period Shifts. (Settlement Agreement, ¶ 3.2.(d)(ii).)

10. Subject to Court approval, tax allocation shall be as follows: 20% of each Participating Class Member's Individual Main Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be

reported via IRS Form W-2. 80% of each Participating Class Member's Individual Main Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported via IRS Form 1099. (Settlement Agreement, ¶ 3.2.(g).)

Here, there are estimated to be 19,497 putative Main Class Members. The NSA, subject to Court approval, is Three Million Six Hundred Sixty-Eight Thousand Five Hundred Dollars ($3,668,500). Thus, the estimated average net recovery of Main Class Members will be approximately $188, should the Court approve the amounts set forth above. This average net recovery is comparable to other wage and hour class action settlements approved by California state and federal courts. (*See, e.g., Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately $65); *Sorenson v. Defendants, Inc*., Case No. 2:06-CV-02674-JAM-DAD (E.D.Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc*., Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20); and *Jones v. Bath& Body Works, Inc*., No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately $50).)

D. Released Claims Summary

1. Release of Main Class Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Alleged Aggrieved Employees, and the LWDA will release the Released Parties from the Released Class Claims. (Settlement Agreement, ¶ 6.2.) Here, "Released Parties" means Twomagnets LLC and its parents and affiliates, subsidiaries, predecessors (including but not limited to Twomagnets Inc.), successors, divisions, joint ventures, clients and vendors, attorneys, agents and assigns, and each of their former and present owners, directors, officers, employees, managers, partners, members, principals, agents, insurers, co-insurers, re-insurers, investors, shareholders, employee benefit plans, employee benefit plan trustees, fiduciaries, and administrators, and personal or legal representatives. (Settlement Agreement, ¶ 1.46.) Released Main Class Claims means all claims that were alleged, or reasonably could have been alleged based on the facts stated in the Operative Complaints of *Williams* and *Minor* or Plaintiffs' PAGA Notices, against the Released Parties that occurred during the Main Class Period, including any and all claims for: (i) meal and rest break violations or premium payments in lieu thereof; (ii) failure to pay earned wages for all hours worked, including minimum wages or overtime wages; (iii) failure to pay wages timely during employment and upon termination; (iv) failure to pay sick time; (v) failure to reimburse employees for required expenses; (vi) failure to furnish accurate wage statements; (vii) conversion; (viii) failure to maintain accurate records; and (ix) unfair business practices relating to or arising out of any of the foregoing. (Settlement Agreement, ¶ 1.43.)

Released 2802 Claims means all claims that were alleged or reasonably could have been alleged based on the facts stated in the Operative Complaints or Plaintiffs' PAGA Notices, against the Released Parties that occurred during the 2802 Class Period relating to (a) failure to reimburse employees for business expenses; or (b) unfair business practices relating to or arising out of the foregoing. (Settlement Agreement, ¶ 1.42.)

2. <u>Release of PAGA Claims</u>

All Aggrieved Employees and the LWDA are deemed to release the Released Parties from the Released PAGA Claims on behalf of themselves, their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of California. (Settlement Agreement, ¶ 6.2.) "Released Main PAGA Claims" means all claims for PAGA penalties that were alleged or reasonably could have been alleged based on the facts stated in the Operative Complaints or the PAGA Notices, that occurred during the Main PAGA Period. (Settlement Agreement, ¶ 1.45.) "Released 2802 PAGA Claims" means all claims for PAGA penalties that were alleged or reasonably could have been alleged based on the facts stated in the Operative Complaints or the PAGA Notices, relating to alleged failure to reimburse employees for business expenses that occurred during the 2802 PAGA Period. (Settlement Agreement, ¶

1.44.)

3. Release by Plaintiffs

Plaintiffs and their representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Released Parties from all claims, transactions, or occurrences between them that occurred or arose anytime from the beginning of time to the date Plaintiffs executed the Settlement Agreement ("Plaintiffs' Released Claims"). Plaintiffs' Released Claims also include an express waiver and relinquishment, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code. (Settlement Agreement, ¶ 6.1.)

E. Notice Procedure

Subject to Court approval, no later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Main Class Members, 2802 Class Members, Main PAGA Group Members, 2802 PAGA Group Members, Main Class Shifts, 2802 Class Shifts, Main PAGA Group Shifts, and 2802 PAGA Group Shifts in the Class Data. (Settlement Agreement, ¶ 8.4.(a).)

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to the Settlement Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Main Class Payment, Individual 2802 Class Payment, Individual Main PAGA Payment, and Individual 2802 PAGA Payment payable to the Class Member, and the number of Main Class Shifts, 2802 Class Shifts, Main PAGA Shifts, and 2802 PAGA Shifts used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (Settlement Agreement, ¶ 8.4.(b).) No later than three (3) days after the Administrator's receipt of any Class Notices returned by the USPS as undeliverable, the Administrator will re-mail the Class Notice using any forwarding addresses provided by the USPS and/or conduct a search for a more current address. (Settlement Agreement, ¶ 8.4.(c).)

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the "Response Deadline" (Settlement Agreement, ¶ 8.5.(a).) "Response Deadline" means forty-five (45) calendar days after the Administrator mails the Class Notice Packet to Class Members and Alleged Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline to respond. (Settlement Agreement, ¶ 1.48.)

A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline (Settlement Agreement, ¶ 8.5.(a).)

Challenges to the number of Main Class Shifts, (if any), 2802 Class Shifts (if any), Main PAGA Shifts (if any), and/or 2802 PAGA Shifts (if any), will be extended an additional fourteen (14) calendar days beyond the forty-five (45) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. (Settlement Agreement, ¶ 8.6.)

IV. <u>PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE</u>

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle* 955 F.2d at p. 1276; *Potter v Pacific Coast Lumber Company* (1951) 37 Cal. 2d. 592, 602-603; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action settlement, the Court need find only that the settlement falls within the "range of reasonableness." (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts must consider the following relevant factors: the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount of offered settlement, the extent of discovery completed and the range of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v American Residential Services, LLC* (2009) 175 Cal. App. 4th. 785, 799.) The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case. (*Clark*, 175 Cal. App. 4th at p. 799; *Wershba*, 91 Cal. App. 4th at p. 245.)

Furthermore, courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the Parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A. <u>The Terms of the Proposed Settlement Are Fair</u>

1. <u>The Settlement Was Reached Through Extensive Arm's Length Bargaining and Negotiation.</u>

As already discussed herein, the Parties have conducted themselves in informed, good faith, arm's-length negotiations after exchanging extensive information about the claims and defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at settling their dispute. After engaging in informal discovery, in attempts to settle this lawsuit, Plaintiffs and Defendant participated in two full day mediations. (Dacre Decl. ¶¶ 7-9.) Thereafter, with the assistance of the mediator, the Parties reached a global settlement (Dacre Decl. ¶ 9.)

In sum, armed with all of the relevant information and with the help of the mediators, counsel for the Parties participated in lengthy, serious, and informed negotiations which has resulted in the proposed Settlement Agreement now placed before this Court for preliminary approval.

2. <u>Investigation and Discovery Were Sufficient for the Parties to Evaluate the Risks Intelligently</u>

As discussed herein, Plaintiffs conducted significant investigation of the facts and law both before and after their respective lawsuits were filed. Plaintiffs' counsel reviewed voluminous supporting documents and information provided by Defendant in preparation for both of the mediations (Dacre Decl. ¶¶ 7-8; Anderson Decl., 34-38.)

3. Plaintiffs' Counsel is Experienced in Similar Litigation

Moreover, counsel for Plaintiffs have represented, mediated, and settled other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed Settlement under the circumstances of the case. (Dacre Decl., ¶¶ 17-20.); (Anderson Decl., ¶¶ 34-38.)

B. The Settlement Provides For Reasonable Compensation To Class Members

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.* (2008). 168 Cal. App. 4th 116, 131-32.) However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id*. at 625.) "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." (*In re Toys R Us-Delaware, Inc*.--Fair & Accurate Credit Transactions Act (FACTA) Litig., (C.D. Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "**Kullar does not … require any such explicit statement of [maximum] value;** it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co*. (2010) 186

Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added).) Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." (*Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).) As discussed below, the recovery of $6,000,000 is within the range of reasonableness, undeniably fair, adequate, and reasonable considering the risks and hurdles of continued litigation.

The damages model used in calculating potential liability was largely based on the number of Class Members (broken down into current and former alleged employees), the number of shifts, the average rate of pay and a random sample of time records, payroll data, wage statements and documents produced by Defendant in preparation for the two mediations. Based on that same information, the estimated number of Main Class Shifts and Main PAGA Periods is 700,000.[2] Plaintiffs represent that the average hourly rate of pay is approximately $32.33. (Dacre Decl., ¶ 13.) As set forth below, taking into consideration conservative discounts, the total of Defendant's estimated maximum potential liability for the class claims in the matter is $70,286,517. (*Id.*) The settlement amount of $6,000,000 represents 8% of the estimated maximum potential recovery. (*Id.*)

The estimated amounts for maximum potential violations were calculated as follows: (Dacre Decl., ¶ 14.)

1. <u>Failure to Pay All Wages Owed</u>

Plaintiffs' class claims for failure to pay all wages owed, including minimum, overtime and double time wages are based primarily on allegations that due to the heavy workload demands, job duties, time constraints and policies and practices implemented by Defendant, Plaintiffs and Class Members were routinely required to perform work "off the clock," including during their meal periods, and without compensation. Moreover, Plaintiffs contend that because they were misclassified as independent contractors, Defendant did not pay them overtime at 1.5 or 2 times the regular rate of pay when they and Class Members worked shifts over 8 hours and/or over 12 hours as required by law.

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[2] Defendant pays Class Members after every shift worked hence the same value is allotted to shifts and pay periods.

Defendant disputes liability with respect to the misclassification claim. Defendant also contends that Plaintiffs lacked evidence of any "off-the-clock" work by themselves and Class Members. Defendant also asserts that, even if class certification were granted on the misclassification issue, Plaintiffs would face significant hurdles in establishing damages for the underlying claim.

The total unpaid wages claim (discounted based on estimated violation rate and Defendant's defenses) was valued at approximately $9,609,773 ($6,037,726 for minimum wages) and ($3,572,047 for overtime wages). ((Dacre Decl. ¶ 14(a.);Anderson Decl., ¶¶ 59, 62.)

2. <u>Meal Break Violations</u>

As with the failure to pay all wages owed claims, the meal break violation claim is also based primarily on Plaintiffs' allegations that due to the heavy workload requirements, requirements in the performance of their job duties, time constraints and Defendant's policies and practices, Plaintiffs and Class Members were frequently not provided a timely, uninterrupted thirty (30) minute meal breaks during their shifts as required by law. (Anderson Decl., ¶ 50.)

Defendant disputes Plaintiffs' allegations and asserts that Plaintiffs and Class members were provided opportunities to take legally compliant meal breaks and asserts the same defenses with respect to liability and damages as set forth above. Taking into consideration Defendant's defenses and potential rate of violation, the meal break claim was valued at approximately $17,262,188. (Dacre Decl. ¶ 14(b.);Anderson Decl., ¶ 52.)

3. <u>Rest Period Violations</u>

As with the meal breaks, Plaintiffs allege that, due to the heavy workload and time constraints and requirements in the performance of their job duties, and Defendant's policies and practices, Plaintiffs and Class Members were regularly unable to take a minimum ten (10) minute uninterrupted rest breaks for every four hours worked or major fraction thereof.

Defendant disputes Plaintiffs' allegations regarding rest break violations based on the same defenses asserted above for the meal break violation claim. Taking into consideration Defendant's defenses and potential rate of violation, the rest break claim was valued at $12,581,770. (Dacre Decl. ¶ 14(c.));Anderson Decl., ¶ 54.)

4. Expense Reimbursement Claim

Plaintiffs' expense reimbursement claim is premised on the allegations that, during the class period, they and Class Members were required to use their personal mobile phones in the performance of their job duties. They had to use their personal mobile phones on a daily basis to, among other things, schedule their shifts, clock in and out and to ensure that they were at their assigned facilities. Defendant did not reimburse Plaintiff and Class Members for the requisite use of their mobile phones.

Defendant disputes this allegation and contends that the Class Members were not required to use their phones as alleged by Plaintiffs. Defendant contends that it would require individualized inquiries into whether and to what extent class members were required to use their personal mobile phones in the performance of their job duties. Taking into consideration Defendant's defenses and potential rate of violation, this claim was valued at $20,004. (Dacre Decl. ¶ 14(d.);Anderson Decl., ¶ 70.)

5. Failure to Provide Accurate Wage Statements

Under Labor Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to $50 for the initial violation and $100 for each subsequent violation up to $4,000. This claim is derivative of the alleged unpaid wages claims asserted. Moreover, Defendant's alleged violation is further exemplified in that it did not issue any wage statements to Plaintiffs and Class Members. Defendant disputes any liability for this claim based on misclassification allegations. Defendant also states that because it believes no wages are unpaid, there can be no derivative penalties. Further, Defendant argues that, if any wage statements were in fact inaccurate, it did not "knowingly and intentionally" fail to provide accurate statements and that Plaintiffs and Class Members did not suffer any "injury" from such inaccurate wage statements.

Taking into consideration Defendant's defenses and potential rate of violation, this claim was valued at $10,726,800. (Dacre Decl. ¶ 14(e.));Anderson Decl., ¶ 65.)

6. Failure to Timely Pay Wages at Separation

This claim is derivative of the other claims asserted. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (i.e., three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment. Plaintiffs allege that penalties are owed under Labor Code § 203 due to, at a minimum, Defendant's failure to pay wages for all hours worked and failure to pay premium wages.

Defendant once again asserts that no unpaid wages are owed as Defendant did not fail to pay the correct wages owed, including overtime or minimum wages, nor did they fail to pay premium wages. Defendant also asserts that healthcare professionals are not "separated" so long as they continue to have active accounts on the platform. Defendant further contends that their actions were not willful as required for penalties to issue and that, thus, waiting time penalties cannot be awarded. Taking into consideration Defendant's defenses and potential rate of violation, this claim was valued at $18,641,991. (Dacre Decl. ¶ 14(f.));Anderson Decl., ¶ 67.)

7. <u>Failure to Pay Timely Wages During Employment</u>

This claim is based on allegations that Plaintiffs and Class Members did not receive payment of all wages owed, including overtime and minimum wages and meal and rest period premiums, within the requisite time under Labor Code section 204. That statute requires that all wages are due and payable twice in each calendar month. For any initial violation under this statute, one hundred dollars ($100) is due for each failure to pay each employee. For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) is due for each failure to pay each employee, plus twenty-five (25) percent of the amount unlawfully withheld. As discussed herein, Defendant adamantly disputes that it failed to pay any lawful wages owed and is therefore not liable for any penalties under this statute. Defendant also contends that liability only applies when employers fail to pay wages on a timely basis; not whether the correct amount of wages were paid. (*See's Candy Shops, Inc. v. Superior Ct.* (2012) 210 Cal. App. 4th 889, 904-905.)

Here, employees can recover penalties either Labor Code section 210 or PAGA but not both. For purposes of settlement, Plaintiffs are pursuing this claim under PAGA, which is discussed below. (Dacre Decl. ¶ 14(g.))

8. UCL Bus. & Prof. Code § 17200 *et seq*

The only remedies available under the unfair competition law ("UCL") Business and Professions Code Section 17200 *et seq.* are restitution and injunction, as opposed to damages *Clark v. Superior Court*, (2010) 50 Cal. 4th605, 610. The UCL provides that "[t]he court may make such orders or judgments ... as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes "earned wages." *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78. Restitution under the UCL is not available for all violations of the Labor Code. (*See Pineda v. Bank of Am., N.A.* (2010) 50 Cal. 4th 1389, 1401-02.) In *Pineda*, the California Supreme Court held Labor Code section 203 is "not designed to compensate employees for work performed [but] it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." (*Id*.) Like Labor Code section 203, section 226 for wage statement violations is also intended to "punish" the employer and is not an action brought to recover wages. (*See Gomez v. Jacobo Farm Labor Contractor, Inc.* (2019) 334 F.R.D. 234, 267-268.)

Here, Plaintiffs' UCL claim is solely premised on the failure to pay lawful wages and premium wages claims discussed above. Plaintiffs' Counsel assigned a zero-dollar value to the UCL claim because it does not provide any additional value in this Action other than to increase the statute of limitations to four years for the underlying claims. Those claims are valued and analyzed above based on the four-year statute of limitations provided by the UCL. However, the UCL claim in and of itself does not provide any additional damages. Therefore, there is no additional or separate monetary value that this statute provides based on the facts of this Action. (Dacre Decl. ¶ 14(h.))

9. Labor Code § 2699 (PAGA**)**

Plaintiffs' PAGA claims are predicated on or derivative of the claims discussed above. The estimated maximum PAGA penalty was calculated by Plaintiffs as $70,000,000. This figure attributes a $100 penalty to each of the estimated 700,000 shifts in scope during the PAGA Period. This figure is based on an assumption that there is a 100% violation rate during the

PAGA Period, such that every single pay period in question involved at least one Labor Code violation, despite disputes regarding Defendant's liability. However, PAGA claims under the facts and circumstances of this case may result in no award or at best a very minimal award by the trial court. Labor Code section 2699(e)(2) states in pertinent part: "[A] court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

For instance, in *Fleming v. Covidien Inc.,* 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See Makabi v. Gedalia,* 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions,* 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice,* Inc., 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each Alleged Aggrieved Employee suffered all violations for each pay period the alleged employee worked. As discussed herein, the nature of the PAGA based claims (i.e., rest break, meal period, wage statements, failure to pay all wages owed and to timely pay wages) and Defendant's asserted defenses thereto present a strong risk that some or all of the PAGA penalties sought may not be awarded.

Defendant denies that a violation for each pay period can be established. Defendant states that because the PAGA claims heavily rely on the same allegations made in the proposed class claims, the PAGA claims are subject to the same defenses, and, thus, for the same reason, Defendant believes no PAGA penalties would be awarded. Defendant also asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial.

Defendant contends that an award of PAGA penalties in addition to class action damages is discretionary, and thus, Defendant insists a Court is unlikely to exercise its discretion to award any PAGA penalties in this Action where class action damages are available to Class Members. Defendant further contends that a "shift" is not equivalent to a "pay period," and thus should be subject to lower penalties.

Given the nature of these claims, as analyzed above and Defendants' defenses thereto, Plaintiffs' Counsel believes it to be likely that if there were any award, it could be reduced considerably. Therefore, the amount of $200,000 (which has been reserved for the Main PAGA claim) is both fair and reasonable (Dacre Decl. ¶ 14(i.)); Anderson Decl., ¶ 80.)

Through their counsel, Plaintiffs took into consideration the significant risks that class certification could be denied on the central claim, or that a merits decision on the central claim would not favor the Class. Plaintiffs have considered the expense and length of continued proceedings necessary to continue this lawsuit against Defendant through trial and any possible appeals. Plaintiffs are also aware of the burdens of proof necessary to establish liability for the claims asserted, Defendant's defenses thereto, and the difficulties in establishing Plaintiffs' damages. (Dacre Decl., ¶ 15.)

The proposed Settlement requires Defendant to pay each Main Class Member who does not opt out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement. (Dacre Decl., ¶ 16.) The amount to be paid to the Class is undoubtedly fair, adequate, and reasonable especially in light of the significant risk to Plaintiffs and Class Members in continuing with the litigation and not prevailing at trial, and thus leaving alleged employees with no recovery. (*Id*.)

For the foregoing reasons, the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Class Members.

V. THE CLASS REPRESENTATIVE SERVICE PAYMENTS AND CLASS COUNSEL FEES ARE REASONABLE AND SHOULD BE AWARDED

The Settlement Agreement provides for an award to be paid to the Class Representatives. The primary purpose is to provide Plaintiffs enhancement award, taking into consideration the risks, time, effort and expenses incurred by them in coming forward to provide invaluable information and litigate this matter on behalf of all Class Members and Alleged Aggrieved Employees. Plaintiffs have actively participated in this litigation by providing significant supporting documents and information and assisting counsel in developing information necessary to litigate and settle this case which has resulted in a favorable settlement for the putative Class Members and Alleged Aggrieved Employees (Williams Decl., ¶ 4.); (Minor Decl., ¶¶ 31-32.) Thus, the Class Representative Service Payments of not more than $10,000 each to Plaintiffs Williams and Minor are reasonable and should be awarded.

Further, as will be discussed in more detail in Plaintiffs' motion for final approval of the Settlement, the Class Counsel Fees Payment of not more than $2,000,000 (1/3 of the GSA), and the Class Counsel Litigation Expenses Payment not to exceed $40,000, are reasonable and within California's standard benchmark and well within the range customarily approved by the California courts in comparable class actions.[3]

VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE

In addition to such terms as the class definition, settlement amounts and payment procedures, the Settlement Agreement reached between the Parties contains a provision to which the Parties stipulate to the Court's provisional certification of the Class but do so for the purposes of this Settlement only. Plaintiffs now request this Court to provisionally certify the Class.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is appropriate when the Class is ascertainable and there is a "well defined community of interest in the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., § 382; *Dunk*, 48 Cal. App. 4th at p. 1806.) State law requirements under California Code of Civil

[3] A Joint Prosecution Agreement (JPA) was executed between Plaintiffs' counsel. The JPA provides that counsel for the Parties shall share in the attorney fee award with 52.5% to James Hawkins APLC and 47.5% to GrahamHollis. APC (Dacre Decl., ¶ 21.)

Procedure section 382 for class certification largely mirror Federal Rules of Civil Procedure Rule 23 – namely, numerosity and typicality of the class representative's claims, adequacy of representation, predominance of common issues and superiority. As discussed below, although Defendant adamantly disputed and continues to dispute Plaintiffs' ability to certify a litigation class, all of the requirements of certification for settlement purposes are met for the proposed Class.

A. The Proposed Class is Ascertainable

Here, Plaintiffs contend the proposed class is ascertainable because all of the Class Members had accounts with Defendant and received their compensation directly from Defendant. The Class Members have been identified through Defendant's records. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records"].)

B. Numerosity of the Class is Sufficient

If the class is sufficiently large, that joinder of all members is impractical or that individual joinder is impractical, the numerosity requirement is met *Hebberd v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. Here, the proposed class consists of 19,497 Main Class Members, including current and former alleged employees of Defendant. Therefore, Plaintiffs contend joinder of individual claims would be impractical and the numerosity requirement is met.

C. There are Common Questions of Law and Fact to the Class

Commonality is met if there are common questions of fact and law to the class. (*Hanlon*, 150 F.3d at p.1019 ["The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class"].) Here, Plaintiffs allege that the proposed Class Members' claims all stem from the same alleged conduct. Specifically, Plaintiffs allege that Defendant violated California wage and hour law because it: (1) failed to pay all lawful wages owed; (2) failed to provide statutorily compliant rest and meal periods and/or to pay one (1) hour of pay at the employees regular rate of compensation for each workday that a compliant meal period and/or rest period was not properly provided; (3) failed to timely pay all wages owed at the termination of the Class Members' employment; (4) failed to timely pay wages during employment (5) failed provide accurate itemized wage statements and (6) failed to reimburse employee expenses. Plaintiffs seek recovery of alleged premium wages, penalties and interest pursuant to the California Labor Code, the California Industrial Welfare Commission ("IWC") Wage Orders, Business and Professions Code § 17200 and PAGA. Although Defendant disagrees with Plaintiffs' contentions for purposes of certifying a litigation class, for purposes of a settlement class, Plaintiffs contend these circumstances create questions of law and fact common to all proposed Class Members.

D. The Typicality Requirement is Met

The typicality requirement is met if the claims of the Plaintiffs are typical of those of the class, though "they need not be substantially identical." (*Hanlon*, 150 F.3d at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long as the claims arise from the same events or course of conduct and are based on the same legal theories. (*Id*.) Here, as set forth in the operative complaint, Plaintiffs contend the claims of the Class Representatives are typical of the other Class Members they represent because they arise from the same factual basis and are based on the same legal theories as those applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.) Thus, for purposes of a settlement class, the typicality requirement is met.

E. The Adequacy Requirement is Met

If the named representative and his or her counsel have no interests adverse to the interest of the proposed class members and are committed to vigorously prosecuting the case on behalf of the class, then the adequacy requirement is met. (*McGhee v. Bank of America*, (1976) 60 Cal. App.3d 442, 450.) Here, under the proposed Settlement, the Class Representatives will receive a reasonable award for their time and effort assisting counsel with factual issues surrounding the case and risk incurred in bringing this action on behalf of the Class Members. Other than this specific payment, all Main Class Members who do not opt out of the Settlement will receive a percentage of the Net Settlement Amount based on the number of shifts each Main Class Member worked during the Main Class Period, and all 2802 Class Members who do not opt out of the Settlement will receive a percentage of the $10,000.00 allocated to the 2802 Class based on the number of shifts each 2802 Class Member worked during the 2802 Class Period. Therefore, no "settlement allocation" questions are raised. (*Hanlon*, 150 F.3d at 1020.)

Finally, Class Members who wish to exclude themselves from the Settlement may do so. (Settlement Agreement, ¶ 8.5.; Exh. A.) As a result, there is no conflict of interest between the Plaintiffs and the Class Members. Additionally, the Plaintiffs and their counsel have prosecuted this action vigorously on behalf of the Class.

F. <u>Common Issues Predominate and Class-Wide Settlement is Superior to Other Available Methods of Resolution</u>

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon*, supra, at 1022.) Plaintiffs contend that the proposed Class in this case is sufficiently cohesive, since all Class Members share a "common nucleus of facts and potential legal remedies." Specifically, Plaintiffs assert that because all of the Class Members and the Class Representatives seek compensation for alleged premium wages for failure to provide compliant meal and rest breaks, as well as penalties and interest for the allegations described herein; common questions about compensation or lack thereof for worked performed by Class Members predominate over individual questions, and the Class Members' potential legal remedies are identical. Although Defendant disagrees with Plaintiffs'contentions; Defendant has agreed the Class may be certified for settlement purposes only.

Additionally, particularly in the settlement context, class resolution is superior to other methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at 1023; *Dunk*, supra, 45 Cal. App. 4th at 1087.) The superiority requirement involves a "comparative evaluation of alternative mechanisms of dispute resolution." *Hanlon*, supra, at p. 1023. Here, the alternative methods of resolution are a plethora of individual claims from potentially over 19,497 plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims.

(*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.)

Therefore, settlement on a class-wide basis is the superior resolution method in this case.

VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE

The Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval ("Class Notice") is attached as Exhibit A to the Settlement Agreement. Should a Class Member wish to exclude himself/herself from the Settlement, he/she can send a request for exclusion to the Settlement Administrator as detailed in the Class Notice. Should a Class Member wish to object to the Settlement, he/she can object as described in the Class Notice. If a Class Member does nothing in response to the Class Notice, the Class Member will be mailed an Individual Main Class Payment and/or Individual 2802 Class Payment, as appropriate.

A. The Class Notice Satisfies Due Process

California statutory and case law vests the Court with broad authority to fashion an appropriate notice process. (Cal. Rules of Court, Rule 3.760 *et seq*.) A proposed method of notice of a proposed settlement is fair, adequate, and reasonable if it has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The procedure for notice to Class Members described herein entails mailing the Class Notice to all known and reasonably ascertainable Class Members based on Defendant's pay records and provides for a reasonable chance of reaching a significant percentage of Class Members. Further, such individual notice by first class mail is routinely approved as consistent with due process. (See, e.g., Manual for Complex Litigation (Third) (1995) §30.41; Wright & Miller, Fed. Practice & Procedure §1797.6 ["Of course, notice by mail to all of the identified class members . . . will suffice"] (citing cases).) Notice by mail is consistent with the class certification notices approved by numerous state and federal courts and is the best notice practicable under circumstances of this case. Other potential alternatives, such as publication of notice in a newspaper, or electronic dissemination of notice through email, are unlikely to be as effective as mail notice. Given the geographic range of Class Members, and the lack of up-to-date email addresses for many Class Members (which, unlike mailing addresses, cannot be updated through the NCOA database), neither publication nor email notice is feasible or reasonably likely to satisfy due process.

B. The Proposed Class Notice Is Accurate and Informative

Not only is the manner of the proposed Class Notice proper, so too is the content of the said notice. The proposed Class Notice provides information on the meaning and the nature of the proposed Settlement, the terms and provisions of the Settlement (and where it may be found), the relief the Settlement will provide the Class Members, the application of Plaintiffs' counsel for reimbursement of costs and attorneys' fees from the Settlement amount, the date, time and place of the final fairness and approval hearing, and the procedure and deadlines for opting out of the Settlement and for submitting objections. Counsel for Plaintiffs and Defendant have spent considerable time attempting to draft a Class Notice that is likely to be readily understood by members of the Class.

The Class Notice also fulfills the requirement of neutrality. It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner. The Class Notice clearly states the Settlement does not constitute an admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made, and that any final determination of that issue will be made at the final approval hearing. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a class notice disseminated under the authority of the Court.

Moreover, the Class Notice complies with CA Rules of Court, Rule 3.766(d) because it provides for an opt-out procedure for the class members and includes the following: (1) a brief explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The Class Notice contains the information required under Rule 3.766 (d). (*See* Exhibit A attached to Settlement Agreement.)

VIII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter the Proposed Order Granting Preliminary Approval submitted concurrently herewith, and thus: (1) grant preliminary approval of the Settlement Agreement, and certify the Settlement Class for the purposes of settlement only; (2) confirm Plaintiffs Jessica Williams and Rochell Minor as Class Representatives; (3) confirm James Hawkins, Lance Dacre and Isandra Fernandez of James Hawkins APLC and Hali M. Anderson and Samara A. Bahu of GrahamHollis APC, provisionally as Class Counsel; (4) approve and appoint CPT Group, Inc. as Settlement Administrator; (5) enter an Order preliminarily approving the proposed Settlement and approving of the Class Notice; and (6) schedule the Final Fairness Hearing Date on _______, 2025 (to be determined by the Court at the hearing for preliminary approval of settlement).

Respectfully submitted,

JAMES HAWKINS APLC

Dated: February 18, 2025

____
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